

1 APPEARANCES (cont.):

2 MR. JOSEPH VON DE BUR
3 527 East Capitol Avenue
4 Springfield, IL 62701
5 (217) 557-1286
6 via videoconference for ICC Staff.

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- direct</u>	<u>Re- cross</u>	<u>By Examiner</u>
None.					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
None.		

1 JUDGE DUGGAN: Pursuant to the authority vested
2 in me by the Illinois Commerce Commission and the
3 State of Illinois, I call Docket T08-0166 for
4 hearing.

5 May we have appearances for the
6 record. I guess we'll start with Mr. Healey.

7 MR. HEALEY: Good afternoon, your Honor.

8 Thomas Healey, H-e-a-l-e-y, in-house
9 regulatory counsel with Illinois Central Railroad
10 Company, the movant today.

11 JUDGE DUGGAN: Okay. Mr. Johnson.

12 MR. JOHNSON: Yes. Thank you, your Honor.

13 My name is Jason Johnson. I'm a rail
14 safety technician for the Illinois Department of
15 Transportation, Central Bureau of Local Roads and
16 Streets.

17 Would you like my address and phone
18 number?

19 THE REPORTER: Yes, please.

20 MR. JOHNSON: Address is 2300 South Dirksen
21 Parkway, Room 204, Springfield, Illinois. The zip is
22 62764. My phone number is area code (217) 557-1399.

1 JUDGE DUGGAN: Mr. VonDeBur.

2 MR. VON DE BUR: Joe VonDeBur, rail safety
3 specialist with the Illinois Commerce Commission,
4 527 East Capitol Avenue, Springfield, Illinois,
5 62701. Phone is (217) 557-1286.

6 JUDGE DUGGAN: Okay. So we're here today on
7 Illinois Central Railroad's petition for extension
8 for work that was initially subject to a stipulation
9 dated 10/24/08 and then contained in a Commission
10 order entered December 17, 2008, for a project at a
11 crossing in -- excuse me -- it's Logan Street in
12 Lincoln, Illinois. And I think off the record we
13 clarified for sure that the work to be done was that
14 as listed in an exhibit attached to the stipulation
15 and it's the exhibit listed as Exhibit B, page --
16 maybe it's all of B.

17 MR. VON DE BUR: Yes.

18 JUDGE DUGGAN: Okay. So can we agree that
19 that's correct, that that is the list of the work to
20 be done? Mr. VonDeBur?

21 MR. VON DE BUR: Yes, sir.

22 JUDGE DUGGAN: Okay. Mr. Healey?

1 MR. HEALEY: Yes, your Honor, that's correct.

2 JUDGE DUGGAN: And I don't know if you need to

3 agree or not but...

4 MR. JOHNSON: I agree, your Honor.

5 JUDGE DUGGAN: And the initial order required

6 this to be done -- anybody can jump in and help me

7 here.

8 MR. HEALEY: December 17th of 2009.

9 JUDGE DUGGAN: Okay. So everybody agrees that

10 the initial order required the work to be done by

11 December 17, 2009, and that --

12 MR. HEALEY: Prior to the expiration of that

13 date, we requested and were granted a first extension

14 which took us to June 18th of 2010.

15 JUDGE DUGGAN: Okay. So a petition for

16 extension was filed November 23, 2009. And for what

17 it's worth, I see in the order that if a petition is

18 filed within 30 days -- no, that's not right. Okay.

19 You're supposed to file within 14 days in advance of

20 the deadline, so you did that. And this makes for a

21 provision for extensions of time up to 30 days.

22 MR. VON DE BUR: Extensions longer than 30 days

1 have to be filed 30 days or more in advance.

2 JUDGE DUGGAN: Okay. So this extension was not
3 filed 30 or more days in advance, so I guess somehow
4 they excused that; is that correct? I mean, if the
5 deadline is December 17th -- and we don't have to get
6 too far into this -- but just looking at it, I see it
7 was filed -- the deadline is December 17th. It was
8 filed on November 23rd. Then that wasn't within
9 30 days. So there must be some provision for
10 exception.

11 Mr. Healey, do you want to address
12 that? Do you understand what I'm saying?

13 MR. HEALEY: I do. I'm not sure that I can,
14 your Honor, other than the dates are what the dates
15 are.

16 JUDGE DUGGAN: Okay. And then they just
17 proceeded. Okay.

18 MR. HEALEY: If I may, and perhaps to help
19 focus a little bit on why we're here today --

20 JUDGE DUGGAN: That's up to Mr. VonDeBur. If
21 you have an opening statement, sure. Then
22 Mr. VonDeBur can have his opening statement, too.

1 MR. HEALEY: Well, what I was going to say,
2 Judge, is our crews were at Lincoln. They were
3 installing the required equipment. We were in a
4 position to comply with the extended date of June 18.
5 But while out in the field it was determined that
6 there was an Ameren utility, electrical pole, that
7 was in the way that would prevent the full erection
8 of the two cantilevers with the signals and the
9 gates.

10 So Ameren was contacted on relocating
11 the pole. We did the work that we could get done
12 given the presence of the pole. There's one
13 cantilever that's up today, but one is not. And then
14 our signal crew was relocated to other areas to
15 handle other projects. Ameren subsequently got the
16 pole line relocated.

17 I've been trying to find out from our
18 folks what day the pole line was relocated. The best
19 I've been able to determine is it was the latter half
20 of June of 2010, but we don't have a specific date
21 for the relocation of the pole line -- at least I
22 don't have that information.

1 MR. VON DE BUR: Electrical, Tom?

2 MR. HEALEY: That's my understanding, yes, that
3 it was Ameren electrical installation.

4 MR. VON DE BUR: Was that the only utility
5 interfering with the installation?

6 MR. HEALEY: That's the only one that they've
7 made me aware of that had to be relocated.

8 JUDGE DUGGAN: Well, I see you don't have a
9 witness here. So is somebody planning on testifying,
10 or are we just talking?

11 MR. HEALEY: Your Honor, I had hoped to have a
12 witness here. I don't. If you want to put me under
13 oath, I can testify, you know, the same thing as a
14 witness would, that we were going to get the work
15 done and we didn't.

16 JUDGE DUGGAN: What happened to your witness?

17 MR. HEALEY: I was hoping to have him here
18 today, Judge, and he called me and said he got called
19 away to something so...

20 JUDGE DUGGAN: Mr. VonDeBur -- who would the
21 witness have been?

22 MR. HEALEY: Well, I had been hoping to have a

1 gentleman named Scott Lipe who's our signal manager
2 here today, but he's not available so...

3 JUDGE DUGGAN: Is he actually in charge of this
4 project, or was he the foreman on site?

5 MR. HEALEY: Well, there's several people. If
6 you look at the stratum of signal, we've got a --

7 JUDGE DUGGAN: Let me refine the question.

8 MR. HEALEY: Please.

9 JUDGE DUGGAN: Does he have direct knowledge of
10 the status of making these improvements and the
11 reasons that they were not done?

12 MR. HEALEY: The person with the most direct
13 knowledge we have is a woman named Rhonda McLauren.
14 She's our signal supervisor out there.

15 JUDGE DUGGAN: Okay. Well, as you know, we
16 like to have the best evidence we can.

17 MR. HEALEY: And I understand that, Judge.

18 JUDGE DUGGAN: Yeah. So I think that -- let me
19 ask Mr. VonDeBur if you have any concerns about the
20 fact that whatever we're going to hear today is
21 pretty much representations made to Mr. Healey as
22 opposed to direct knowledge, or do you have another

1 way to verify the basis --

2 MR. VON DE BUR: I would have those same
3 concerns if I were getting the information firsthand
4 from anyone. But my main concern is that the project
5 is moving in the right direction. I know they have
6 had problems with utility relocation. But, as you
7 know, the Illinois Commerce Commission regulates
8 utilities, and we can put the field personnel in
9 contact with whomever they need to to work those
10 things out.

11 I had let your personnel know that,
12 but no one has ever contacted me in regards to that;
13 "your" being -- I'm addressing Mr. Healey.

14 MR. HEALEY: And I understand that, Joe.

15 You know, in all candor, your Honor,
16 Staff, including Mr. VonDeBur, and myself have had
17 multiple discussions about the fact that we are
18 shorthanded on signal help, and it is a situation
19 that we are working to address.

20 We have taken on a large number of
21 projects through the acquisition of the Elgin,
22 Joliet & Eastern Railway here in Chicago. And given

1 the political spotlight that that has, a lot of our
2 signal projects have been directed in that area so
3 that signals are ready for communities to have quiet
4 zones, et cetera.

5 And, frankly, while the delay from the
6 Ameren pole relocation did actually occur and was a
7 reason why our crew couldn't finish the work in time
8 for June 18th, from everything I've heard, that takes
9 us to the end of June as to why the project wasn't
10 done by the end of June.

11 We haven't had any crews in the area
12 since that time. So that we're clear, our signal
13 crews try to knock out multiple projects in the same
14 area so they don't spend half a day driving several
15 hundred miles to get a signal project done. And so
16 this project hasn't had a signal crew in the area.

17 I'm very well aware of the Staff's
18 concern about our level of signal maintainers. We've
19 had several meetings on the subject. We are working
20 to get it addressed. But we wind up in a situation
21 like this where, in fact, we haven't had a signal
22 crew back down there to get this work finished. The

1 estimate I have from my signal folks is the project
2 is half done.

3 JUDGE DUGGAN: Say that again.

4 MR. HEALEY: The project is half done, your
5 Honor. We've completed --

6 JUDGE DUGGAN: That's what I was going to ask
7 you because it sounded to me like you said you had
8 everything up but one cantilever.

9 MR. HEALEY: The cantilever is present and has
10 to be erected. We've got the materials, and now it's
11 a question of getting it erected.

12 JUDGE DUGGAN: Okay. That's not quite
13 addressing what I said.

14 MR. HEALEY: Okay.

15 JUDGE DUGGAN: I thought -- or we could just
16 start over and you can tell me exactly what is done
17 and what is not done. Why don't we just do that? I
18 mean, if you had to go down this list, would there
19 just be one thing that's not done or a number of
20 things not done? By "this list," I'm referring to
21 Exhibit B in the stipulation.

22 MR. HEALEY: I know for a fact that there is a

1 cantilever that is not erected.

2 JUDGE DUGGAN: Okay. And do you know for a
3 fact that there's anything else not done?

4 MR. HEALEY: There would be associated
5 signaling work with that cantilever. But other than
6 that, I don't know, your Honor.

7 Joe may know more actually than I do
8 on it.

9 JUDGE DUGGAN: Do you know what's up and what's
10 not?

11 MR. VON DE BUR: I spoke with our signal
12 inspector today, and he has not heard anything about
13 the project in at least a couple months.

14 JUDGE DUGGAN: So the Commission really doesn't
15 know the status of the work firsthand.

16 MR. VON DE BUR: Not firsthand, no.

17 JUDGE DUGGAN: Or even reliably second or
18 thirdhand?

19 MR. VON DE BUR: Correct.

20 JUDGE DUGGAN: Okay. Well, the whole thing was
21 to put in gates. So I presume there's not gates
22 there yet? Nobody knows that either.

1 MR. VON DE BUR: There are not gates.

2 MR. HEALEY: I don't believe there were
3 originally. We weren't replacing gates, so I suspect
4 there's not gates currently present.

5 JUDGE DUGGAN: Is there working signals there?

6 MR. VON DE BUR: Yes.

7 MR. HEALEY: That, I believe, is correct, yes.
8 That's what my signal folks have told me. So there
9 are flashing lights present.

10 JUDGE DUGGAN: Okay. Are the old cantilevers
11 there? All I'm wondering is if it's in worse shape
12 now than it was when this project had started.

13 MR. VON DE BUR: Well, the existing equipment
14 will not be removed or taken out of service until the
15 replacement is in place and functional; otherwise,
16 they would have crews on the ground to control the
17 train movements.

18 JUDGE DUGGAN: Okay. Do you agree with that,
19 Mr. Healey, that it's not in worse shape now than it
20 was when the project started?

21 MR. HEALEY: I believe that's correct based on
22 the fact we talked about the cantilevers having a

1 different base, et cetera; that, in fact, the
2 cantilever, the one that's there, is positioned but
3 is not -- is likely not functioning. It's likely the
4 original cantilever on that side functioning.

5 JUDGE DUGGAN: Okay. Well, you know,
6 without -- let me just go ahead and ask, what is your
7 position, Mr. VonDeBur?

8 MR. VON DE BUR: Our position is we cannot
9 continue to grant extensions of time indefinitely.
10 Generally we can understand where one extension of
11 time is necessary. But when a second one is
12 requested, we like the railroad to come in and
13 explain personally exactly why that is.

14 Staff's position is that we're okay as
15 long as there's progress being made on the project.
16 And even the fact that I've tried to contact
17 personnel and let them know we can help them with the
18 signal (sic) relocation didn't get anyone's
19 attention.

20 JUDGE DUGGAN: What kind of assistance can you
21 offer?

22 MR. VON DE BUR: We can put them in contact

1 with persons at Ameren or pretty much any utility in
2 Illinois -- whether it's electric, gas -- and have
3 them assist in making sure that their engineering
4 departments cooperate with the railroad's and vice
5 versa.

6 JUDGE DUGGAN: But that ship has sailed, so to
7 speak? I mean, that issue --

8 MR. VON DE BUR: No. That help is still
9 available.

10 JUDGE DUGGAN: Is there an issue which that
11 would help on?

12 MR. HEALEY: At the current time, Joe, I don't
13 think so. I mean, my understanding is the Ameren
14 line has been relocated, and there isn't anything
15 further that's prohibiting the installation of the
16 second cantilever and cutting in the signals.

17 MR. VON DE BUR: Very well. At this point I
18 would like some assurances that the CN personnel
19 would contact us and let us know just when they will
20 have crews on site to finish the work.

21 JUDGE DUGGAN: The CN. What's CN?

22 MR. VON DE BUR: I'm sorry. CN is the --

1 MR. HEALEY: CN is a trade name, your Honor,
2 that Illinois Central and a number of other of our
3 railroads operate under. So we go by CN informally.

4 JUDGE DUGGAN: What's it stand for?

5 MR. HEALEY: It's short for -- well,
6 technically it stands for nothing, but it's the
7 initials used by the parent company which is Canadian
8 National Railway Company. They're the 100 percent
9 owner of Illinois Central Railroad Company.

10 JUDGE DUGGAN: So you would want assurance that
11 someone -- would it be correct -- obviously Illinois
12 Central Railroad is the party here.

13 MR. VON DE BUR: That's correct.

14 JUDGE DUGGAN: So someone from Illinois Central
15 Railroad Company to do what?

16 MR. VON DE BUR: To contact Staff, Commerce
17 Commission Staff, and let them know when they're
18 going to be working on the project and when it will
19 be completed.

20 JUDGE DUGGAN: Okay. Is there a particular
21 contact person that you know to -- well, how about
22 this: Who's the woman you said that knows the most?

1 MR. HEALEY: The woman who knows the most is
2 Rhonda McLauren.

3 Joe, do you talk to Tom Hilliard very
4 much?

5 MR. VON DE BUR: No, I do not. I'm not
6 familiar with that person.

7 MR. HEALEY: He's the senior manager of
8 signals. He's the most senior person I spoke with at
9 the company. Tom Hilliard is his name.

10 MR. VON DE BUR: He's with the Illinois
11 Central?

12 MR. HEALEY: He is Illinois Central's senior
13 manager of signals.

14 JUDGE DUGGAN: Where is he at?

15 MR. HEALEY: I believe he works out of our main
16 building in Homewood although I've never met him.
17 And his cell phone is a 618. So I suspect he's been
18 relocated to Homewood from somewhere else.

19 MR. VON DE BUR: Our signal personnel are
20 managed by Rod Bergeron. By "signal personnel," I
21 mean signal inspectors. Rod Bergeron is the one that
22 approves the installation plans and the estimates.

1 He would be the most reasonable person to contact.

2 JUDGE DUGGAN: What about Rhonda? Where is she

3 at?

4 MR. HEALEY: I don't have Rhonda's -- I know

5 she's downstate, your Honor, but I don't know exactly

6 where Rhonda is located.

7 JUDGE DUGGAN: Is it M-c-A-r-r-e-n?

8 MR. HEALEY: No. Her last name is spelled

9 M-c-L-a-u-r-e-n.

10 JUDGE DUGGAN: M-c-L-a-u-r-e-n?

11 MR. HEALEY: That's correct. She's the person

12 on the ground most knowledgeable about the status of

13 the project.

14 JUDGE DUGGAN: And most knowledgeable about why

15 things haven't been done.

16 MR. HEALEY: About the delays. That's correct.

17 JUDGE DUGGAN: And who's the person that

18 determines priorities that assigns crews?

19 MR. HEALEY: I believe that to be Mr. Hilliard.

20 Joe, would the most expeditious thing

21 to be have Tom Hilliard call Rod Bergeron on it?

22 MR. VON DE BUR: Yes, it would.

1 MR. HEALEY: Okay. All right. I will get that
2 arranged. It's 3:00 o'clock now, so I'll see if I
3 can get that done today.

4 Do you have a number for Rod? I know
5 I've got his E-mail address, but I don't know that
6 I've got his number.

7 MR. VON DE BUR: Rodney Bergeron.

8 MR. HEALEY: Rod, yeah.

9 MR. VON DE BUR: And it is (217) 557-1287.

10 MR. HEALEY: Okay. All right. I'll arrange to
11 have -- I spoke to Mr. Hilliard earlier today on the
12 project so I know -- again, I know he's aware of it,
13 so I will have him call Rod and get it scheduled.

14 JUDGE DUGGAN: Here's what's occurring to me
15 is -- one option is that I don't make an order but we
16 set it over for 30 days and do statuses and keep
17 checking up. I don't know if that's practical given
18 everybody's time schedule. That's one more hearing
19 you've got to attend. But it's one way to keep an
20 eye on things and find out that people make their
21 contacts and that people get information they're
22 supposed to get, did what they say make sense, are we

1 going to get a schedule that says that this project
2 has this priority and we have the crews assigned and
3 scheduled to go at a certain date or do we have
4 nothing, we have too many other things in priority.

5 MR. HEALEY: Your Honor, if I may -- and, Joe,
6 you can tell me how you feel about this -- but I
7 wouldn't mind setting it over for a week and making
8 sure that Mr. Bergeron and Mr. Hilliard have spoken
9 and gotten something agreed by next week.

10 MR. VON DE BUR: That's acceptable to me.

11 JUDGE DUGGAN: What's your role in this?

12 MR. JOHNSON: Your Honor, usually IDOT is a
13 party to stipulated agreements, and usually our
14 director of highways will sign off on three-party
15 agreements.

16 What IDOT does, we administer -- a lot
17 of times we will administer payments from the Grade
18 Crossing Protection Fund that the ICC handles.

19 JUDGE DUGGAN: Okay.

20 MR. JOHNSON: So usually -- a lot of times in a
21 lot of cases and also -- this case is no exception --
22 there's a lot of times we will concur with the

1 position of ICC Staff because both of our interests
2 are basically the same.

3 JUDGE DUGGAN: Okay. I was going to ask if you
4 had a position.

5 MR. JOHNSON: Yeah. Our position at this point
6 in time would be to concur with ICC Staff.

7 JUDGE DUGGAN: Okay. Before I can set
8 hearings, I've got to consult the audiovisual
9 schedule, the conference room and all this and a lot
10 of things. We do need to set something before we
11 leave here today.

12 MR. HEALEY: Your Honor, if I can suggest maybe
13 you tentatively set it over for 2:30 next Tuesday so
14 a full week from today. And if we need to reschedule
15 from that, we do. Anytime next Tuesday I'm open.

16 JUDGE DUGGAN: We can go off the record for a
17 second to schedule the hearing.

18 (Whereupon, a discussion was had
19 off the record.)

20 JUDGE DUGGAN: Back on the record.

21 Off the record we discussed various
22 options to meet the needs of both Staff and Illinois

1 Central. And in the course of that, we mentioned
2 that, in fact, there are enforcement provisions such
3 as penalties of a thousand dollars a day possibly
4 going back to when the project's last deadline
5 expired, I believe, on June 18th of 2010.

6 And we discussed that I personally
7 lean heavily towards a schedule based upon
8 information from IC that would require communication
9 stating what projects they have ahead of this,
10 whether there's a priority list, what is their
11 available personnel and, based upon that information,
12 when would they schedule this work to be done.

13 But rather than require that much
14 depth and detail, at this point Mr. VonDeBur informed
15 me -- and we'll confirm this on the record -- that he
16 and his needs as he feels the Commission needs it
17 right now will be satisfied with Mr. Hilliard, Tom
18 Hilliard, talking with Rod Bergeron both about when
19 it can feasibly be done, when it would be done, and
20 hopefully that there will be sufficient motivation
21 that it will get done and we can set a new deadline
22 based upon that. We also discussed that -- in which

1 case that is fine with me. I'm not going to require
2 more at this time than Staff feels that the
3 Commission needs.

4 We also discussed that if Mr. Healey
5 and Mr. VonDeBur, whomever, the people in charge,
6 each position, if you can work out a proposed order
7 and submit it to me, that's fine, and Mr. Healey
8 would not -- actually, an agreed proposed order --
9 and then Mr. Healey would not have to appear and
10 Mr. VonDeBur could present it to me. But I think
11 that I do still need to meet and mark the record
12 heard and taken and I'm also informed that the many
13 prerequisites to entry of a proposed order for
14 extension of time have been met.

15 So we're going to continue this --
16 I'll state a continued date -- but, Mr. Healey, do
17 you have anything to add to that or to confirm that
18 that's what we've been doing off the record?

19 MR. HEALEY: I can confirm that's what we did
20 off the record. I can confirm Illinois Central's in
21 agreement with it and I can also extend to
22 Mr. VonDeBur our appreciation.

1 JUDGE DUGGAN: Mr. VonDeBur, do you concur that
2 that's what's happened off the record? Do you have
3 anything to add?

4 MR. VON DE BUR: I do concur, and I find those
5 terms agreeable.

6 JUDGE DUGGAN: Okay. Mr. Johnson, do you have
7 anything to say here?

8 MR. JOHNSON: Nothing further to add.

9 JUDGE DUGGAN: Okay. Then with that
10 understanding, we're going to meet in a week with the
11 understanding that Mr. Rod Bergeron of the Commission
12 Staff and Mr. Tom Hilliard of the Illinois Central
13 Railroad are going to be in communication and see
14 what kind of progress they can give us reason to
15 believe is going to occur.

16 So this hearing will be continued
17 until next Tuesday, October 5th, at 9:30 a.m. in the
18 locations of both Springfield and Chicago by the
19 audiovisual conference rooms.

20 Anything else?

21 MR. HEALEY: No, your Honor.

22 JUDGE DUGGAN: Okay. Thank you.

1 (Whereupon, the above-entitled
2 matter was continued to
3 October 5, 2010, at 9:30 a.m.)
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